

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:11CR70
)	
v.)	
)	
VICTOR RAMIREZ,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the Court because defendant Victor Ramirez has filed a notice of appeal (Filing No. [74](#)) of this Court's order and judgment (Filing No. [73](#)) denying his motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Filing No. [70](#)). "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." 28 U.S.C. § 2255 Rule 11. Thus the Court will consider the issuance of a certificate of appealability, and Filing No. [76](#), referring instead to a direct criminal appeal, will be revoked.

A certificate of appealability cannot be granted unless the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). But where, as here,

the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner

shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. . . .

Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further. In such a circumstance, no appeal would be warranted.

Slack v. McDaniel, 529 U.S. 473, 484 (2000) (emphasis added).

In this case, as delineated in the Court's memorandum opinion, a plain procedural bar is present. See Filing No. [72](#). Therefore, no appeal is warranted. Accordingly,

IT IS ORDERED:

1) Filing No. [76](#), referring to a direct criminal appeal, is hereby revoked.

2) No certificate of appealability will issue.

DATED this 2nd day of April, 2013.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court